DOCUMENT RESUME

ED 393 784 SO 026 242

AUTHOR Croddy, Marshall; And Others
TITLE The Immigration Debate: Public Policy, Proposition 187, and the Law.
INSTITUTION Constitutional Rights Foundation, Los Angeles, Calif.
PUB DATE 95
NOTE 17p.
AVAILABLE FROM Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005.
PUB TYPE Guides - Classroom Use - Teaching Guides (For Teacher) (052)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Civics; Government Role; Instructional Materials; *Law Enforcement; *Law Related Education; Learning Activities; Secondary Education; Social Studies; Teaching Methods; *Undocumented Immigrants
IDENTIFIERS California; Constitutional Rights Foundation; *Proposition 187 (California 1994); United States Constitution

ABSTRACT

This resource packet contains three lessons on issues relating to recent debates over illegal immigration. Each lesson is designed to provide the teacher with a background reading, a directed discussion strategy, and one or more interactive classroom activities to address the topic presented. The first lesson, "Coming to America--Undocumented Workers," features a simulation of a presidential commission that considers various policy options on the problem of undocumented workers. The second lesson, "Civic Options on Proposition 187," contains a case study of the purpose, provisions, pro and con arguments, and the potential impact of the California state initiative passed by voters in November 1994. The third lesson, "Education and the 14th Amendment," contains a case study of the U.S. Supreme Court case of Plyler v. Doe (1982), which will be crucial in determining the constitutionality of Proposition 187 and similar measures that may be proposed. Each lesson contains a reading for teachers to duplicate and distribute to students. (LH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 393 784

THE IMMIGRATION DEBATE:

Public Policy, Proposition 187, and the Law

SO 026 242

ERMISSION TO REPRODUCE THIS
ATERIAL HAS BEEN GRANTED BY
M. Croddy
TO THE EDUCATIONAL RESOURCES
NFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

CONSTITUTIONAL RIGHTS FOUNDATION

BEST COPY AVAILABLE

THE IMMIGRATION DEBATE:
Public Policy, Proposition 187, and the Law

Developed by:
Marshall Croddy,
Director of Program and Materials Development

Writers and Editors:
Marshall Croddy
Bill Hayes
Carlton Martz
Lisa Friedman
Charles Degelman

Production:
Andrew Costly

CRF Publication Committee Reviewer:
Susan Troy, Esq.

CONSTITUTIONAL RIGHTS FOUNDATION
601 South Kingsley Drive
Los Angeles, CA 90005
(213) 487-5590 Fax: (213) 386-0459

© 1995, Constitutional Rights Foundation

BEST COPY AVAILABLE

INTRODUCTION FOR TEACHERS

Immigration has always been a central part of the American Experience. Immigrants have enriched our culture, contributed mightily to our economic growth and helped define us as a nation. Countless numbers have put down roots and found new opportunities in the United States.

In spite of these truths, the lives of immigrants in our country have often been often difficult. As newcomers, many have faced poverty, prejudice, and outright hostility; many return to their own lands, discouraged and worse off than when they arrived.

Today, after years of fluctuation, rates of immigration are at levels approaching those last seen at the end of the nineteenth century. This fact, and concerns over the economy, taxes, and America's capacity to accommodate newcomers have fueled new debates on immigration, especially regionally. How these factors will influence immigration law, policy and enforcement on a national basis remains to be seen, but recent trends suggest that the debate will heighten in the years to come.

This Constitutional Rights Foundation resource packet contains three lessons on issues relating to recent debates over illegal immigration. Each lesson is designed to provide the teacher with a background reading, a directed discussion strategy, and one or more interactive classroom activities to address the topic presented.

Reading and Activity A: Coming to America—Undocumented Workers

Description: Adapted from *Bill of Rights in Action*, our national quarterly curricular newsletter, this lesson focuses on the debate over illegal immigration in the United States and features a simulation of a presidential commission that considers various policy options on the problem of undocumented workers.

Recommended Sequence of Instruction:

- Student Reading: Duplicate and have students read "Coming to America—Undocumented Workers."
- Directed Discussion: Conduct a class discussion using the questions provided.
- Activity: Conduct "The President's Commission" simulation activity by dividing the class into small groups and following the instructions provided.

Reading and Activity B: Civic Options on Proposition 187

Description: This lesson contains an objective case study of the purpose, provisions, supporters, and opponents, pro and con arguments, and the potential impact of Proposition 187, a California state initiative passed by the voters in the November 1994 election. Students read and discuss the case study and then evaluate and discuss the measure using a policy analysis framework. Additional activities are also provided.

Recommended Sequence of Instruction:

- Student Reading: Duplicate and have students read "A Controversial Proposition."
- Directed Discussion: Conduct a class discussion using the questions provided.
- Activities: Conduct "A Matter of Policy" critical thinking activity using the instructions provided. Students are also encouraged to complete the "Stating Your View" writing activity and the "Civic Options" discussion activity, which provide positive models for civic action.

Reading and Activity C: Education and the 14th Amendment

Description: This lesson, reprinted from *Bill of Rights in Action*, provides a case study of the U.S. Supreme Court case of *Plyler v. Doe* (1982), which will be crucial in determining the constitutionality of Proposition 187 and other like measures which may be proposed. Students read and discuss the case study and then participate in a moot court activity using the facts and arguments of the case.

Recommended Sequence of Instruction:

- Student Reading: Duplicate and have students read "Education and the 14th Amendment."
- Directed Discussion: Conduct a class discussion using the questions provided.
- Activity: Conduct the moot court simulation using the instructions provided. You may wish to debrief the activity by asking students to state and support an opinion about what impact the decision would have on Proposition 187 based on a comparison of the facts and holdings of the case.

Constitutional Rights Foundation is a Los Angeles-based, non-profit, non-partisan citizenship education organization with a 32-year history of providing teachers and students around the nation with programs and materials on law and government, history, business and civic participation.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, California, 90005 (213) 487-5590. Write or call for a free subscription to *Bill of Rights in Action* and/or a materials catalog.

COMING TO AMERICA— UNDOCUMENTED WORKERS

You've heard a lot of talk about illegal immigrants, or undocumented workers. Illegal immigration is becoming one of the greatest political issues in this country today...and one of the most difficult to resolve. This article explores questions about illegal immigration.

How Many? Where Do They Come From?

No one really is sure how many undocumented workers live in the United States. Estimates range from 2 to 12 million persons, but these are guesses. Moreover, the undocumented population fluctuates. Population experts have discovered that while there is a constant flow of undocumented persons coming into the United States, there is also a counterflow leaving each year. This is especially true for illegal immigrants from Mexico.

Illegal immigrants come from many parts of the world—Latin America, Europe, Asia, and Africa. Mexicans make up the single largest group of undocumented workers. But many Mexicans remain only temporarily in the United States. Many get unskilled, low-paid jobs that do not last long. When the jobs end, they often return to Mexico. One expert has claimed that the average stay of undocumented Mexicans is around six months. Of course, some remain for much longer, while others are caught and deported. Each year about 1 million persons, the majority of them Mexican, are arrested by immigration officers.

Why Do They Come?

Thousands of Mexicans, some with their families, cross illegally into the United States each year looking for work. They come because of conditions in Mexico. Mexico's population is increasing rapidly. It is projected to grow from 99 million in 1995 to 154 million in 2025. In 1975, Mexico's population was 60 million.

Although its population is exploding, Mexico's agricultural output has not grown much since 1975. About half of its farmers do not grow enough to feed their families. This has pushed many to search for jobs in the cities. But the unemployment rate in Mexico often climbs to 25 percent. Of those who do find jobs, 60 percent work for very low wages. In numerous rural villages and in squatter slums outside major Mexican cities, poverty threatens the survival of many families. Many people survive from the money that illegal immigrants send home from the United States. Many decide to join the thousands crossing the border into the United States in search of work. With the recent devaluation of the peso and economic crisis in Mexico, the problem is expected to get much worse.

Under current U.S. immigration law, only about 25,000 Mexicans may legally immigrate into this country each year. But there is at least a two-year waiting list. To get on the list, a Mexican must either

- be a close relative of a legal U.S. resident, or
- be a skilled worker or professional.

For many poor and unemployed Mexicans, these restrictions make it almost impossible to immigrate legally to the United States. Many do not want to immigrate permanently. They just want to get a job, make some money, and return home.

How Do They Come?

Possibly as many as 3 million people attempt to cross the U.S.-Mexican border illegally each year. At the busiest point, from Tijuana, up to 3,000 illegal immigrants attempt to slip over the border every night. The Border Patrol estimates that only one-third of these people are caught.

A "war zone" of sorts exists along the border. Government agents use helicopters with search lights and electronic sensors planted on canyon paths to detect illegal immigrants. Thousands are arrested, deported, and arrest-

ed again in their attempts to reach temporary safety within the United States.

Smuggling illegal immigrants into the United States is a big business along the Mexican border. In the Tijuana area just south of San Diego, 100 organized bands with 15,000 guides, known as coyotes, take in millions of dollars a year. Many immigrants learn that their chances of making it across the border are much better if they pay someone to smuggle them in. The Border Patrol catches many of those without guides.

The job of stopping illegal immigrants along the 1,952-mile U.S.-Mexico border belongs to the U.S. Border Patrol. When illegal immigrants are caught, they are not brought to trial. Trials for thousands who are caught would overpower the federal court system. So most are simply detained and then bused back across the border. Quite often, they attempt their journey again within a few days. This situation has made the frustrating job of controlling the border nearly impossible for the Border Patrol.

What Effect Do They Have on the Economy?

Most undocumented Mexicans come to the United States to work and make money. But they do require government services. Their children attend public schools. When they get sick, they go to public hospitals. Most studies, however, have found that illegal immigrants pay more in payroll taxes—income taxes and Social Security—than the costs of these services. The problem is that local government pays for the services that illegal immigrants need and the federal government collects the bulk of the taxes that they pay.

Many politicians, especially in California, have demanded that the federal government compensate the state and local governments for these services. Many employers want illegal immigrant labor. Undocumented workers work for lower wages and seldom complain about working conditions. For example, illegal immigrants harvesting crops in hot dusty fields rarely protest when they are not provided with fresh water or clean toilets. Obviously, some employers of illegal immigrants like them because they can exploit or cheat them. Some employers have even refused to pay undocumented workers, because they know that the workers would be afraid to report them for fear of being turned in to the INS.

The Immigration Reform and Control Act of 1986 made it illegal for employers to hire undocumented workers. But this provision of the law has had questionable effect. The INS permits employers to accept any of 29 different documents as proof of work eligibility. For anywhere from $20 to $60, an illegal can buy fraudulent documentation.

Perhaps the greatest worry Americans have about illegal immigrants is the belief that they take away jobs from U.S. citizens.

Most studies, . . . have found that illegal immigrants pay more in payroll taxes—income taxes and Social Security—than the costs of these services.

There is a great debate among economists and others over this issue. No hard statistics have been produced that show how seriously American workers are hurt by illegal immigrants taking jobs they could fill.

Some experts believe that undocumented workers generally take hard, low-paying jobs that most Americans turn down—picking crops, digging ditches, busing tables, washing dishes, cleaning, working in clothing factories, etc. The former commissioner of the INS, Lionel Castillo, has stated that he believes illegal immigrants create jobs and benefit the economy. "Some individual workers get hurt...." he says. "But as a country, our economy is strengthened...."

Former Secretary of Labor, Ray Marshall, disagrees with Castillo. Marshall believes that

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590

illegal immigration "hurts American workers (especially) minorities, women and young people."

What Should Be Done?

Most Americans believe that something should be done about the massive illegal border crossings from Mexico. But so far, little has been accomplished. One reason is that the wave of illegal immigrants benefits many Americans. Another reason is the sheer number of people crossing the long U.S.-Mexico border. Nonetheless, numerous proposals have been made to deal with the problem. Some are outlined below:

(1) Intercept illegal immigrants at the border. This would entail beefing up the Border Patrol and perhaps even calling on National Guard troops to help out. Some supporters of interception believe that, instead of trying to contain the entire border, the Border Patrol should concentrate its forces on high-frequency crossing points, such as the 13-mile border near San Diego. Almost 90 percent of all border captures are made along border segments totaling just 100 miles in length. Lights, fences, and automobile barriers could be built along this 100-mile stretch. Some supporters of interception favor imposing a $1 border-crossing toll at border checkpoints to pay for beefing up interception efforts. More than 400 million people cross border checkpoints each year. This minimal fee, say supporters, would be a good way to generate revenue for interception. Opponents of interception argue that it would take a small fortune to seal the border, because people will always find a way to cross it. As for sealing only certain segments, opponents say those crossing the border will simply choose different routes.

(2) Stop employers from hiring illegal immigrants. This would entail stiffening punishments on employers, particularly repeat offenders. Assets from a business could be forfeited to the government. Many supporters urge the creation of a fraud-resistant federal identity card for every person legally in the United States. Persons would present this card when they applied for employment. This would prevent employers from mistakenly hiring illegal immigrants. Opponents argue that punishing employers would hurt business and start making employers reluctant to hire minorities. They also argue that no card is fraud-proof and people would find a way to make false cards.

(3) Stop government services to illegal immigrants. This would entail passing laws requiring public schools, hospitals, and welfare offices to require proof of citizenship or legal residency before permitting persons to use non-emergency public services. Supporters believe that this would relieve taxpayers from paying for services for illegal immigrants. Opponents argue that this would do nothing to stop illegal immigration, that it would send children into the streets and leave dangerous diseases undiagnosed, and that the Supreme Court has declared such laws unconstitutional in Plyler v. Doe (1982).

(4) Aid Mexico. Others who have studied the illegal immigration situation believe that something should be done to eliminate the basic cause of the problem—the poor economic conditions in Mexico. These experts propose that the United States substantially increase economic aid to Mexico, enabling it to put more of its own people to work at better wages. They also support increased trade with Mexico, to which they hope the recently passed North American Free Trade Agreement will be a contributing factor. Some opponents of assisting Mexico believe that aid money seldom works, and others think it would take more money than America can afford and too much time before it would affect the problem.

. . . the greatest worry Americans have about illegal immigrants is the belief that they take away jobs from U.S. citizens.

(5) Improve methods for identifying eligible workers. Some experts believe that the best way to effectively deal with illegal immigration is to find ways to better identify real citizens and documented workers. Proposals are being considered for the establishment of a central registry, a database listing all people eligible to work in the United States. Another proposal

calls for a national identity card for all eligible workers. Those opposed to these ideas are concerned that they will increase discrimination and violate privacy rights of individuals. Those who support the ideas point to other countries that already have such systems, and believe that they offer the only truly effective means of tracking illegal workers.

For Discussion

1. Why do you think most illegal immigrants come to the United States?
2. Do you think they help or hinder the U.S. economy? Explain your answer.
3. What do you think should be done about illegal immigration?

A Simulation: The President's Commission

What should the United States do about illegal immigration? In this role-play, your class will have a chance to come up with its own solution. After the class has read the article on undocumented workers, follow these instructions:

1. **Form the following role groups:**

   Employers of Illegal Immigrants: You claim that you need a supply of unskilled laborers willing to work at hard jobs for low wages. You say its difficult to get Americans to take such jobs.

   Labor Unions: You are convinced that undocumented workers take jobs away from Americans and keep wages low.

   Border Patrol: You are frustrated that the U.S.-Mexican border is like a revolving door. Border Patrol officers arrest thousands of illegal immigrants. Often they are deported only to try to re-enter the U.S. once again.

   Supporters of Illegal Immigrants: You are a group of Americans who sympathize with and represent illegal immigrants. Your position is that undocumented workers do not want to break American laws by crossing the border unlawfully. They are driven to do so however, by their desperate need to support their poverty-stricken families.

   President's Adviser: One person should be selected to represent the president, who wants to develop an effective plan for dealing with illegal immigration. You have no position but will act as chairperson of the commission. Your job is to put together a plan that all members of the commission can support and recommend. If the commission is divided at the end of its meeting, you will make your own recommendation to the president.

2. Each of the four role groups should review the proposals listed in the last section of the article on undocumented workers and select one to advocate. Then every group should review the article to gather facts supporting its proposal and prepare to present its proposal to the group.
3. After all the groups have prepared their proposals, a spokesperson from each group should present its proposal to other members of the commission. After each presentation, commission members and the president's adviser may ask questions and debate the merits of the proposal.
4. When all the groups have finished their presentations, the president's adviser will conduct a vote to decide on one proposal to recommend to the president. Each group has one vote. If a majority fails to support any of the proposals, the president's adviser will decide on his or her own recommendation to the president and announce it.
5. When the role-playing simulation has ended, the class as a whole should discuss the advantages and disadvantages of the proposal that was finally adopted.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590

Major U.S. Immigration Laws

Immigration Act of 1819: This law required ship captains to provide customs officials with a list of immigrants describing age, sex, occupation, nationality, and destination. Passengers ill with contagious diseases had to be quarantined. States carried out the provisions of this law.

Immigration Act of 1875: This act provided for inspection of vessels. It barred admission of ex-convicts as well as Chinese and Japanese who had been brought to the United States against their will.

Contract Labor Law of 1885: This law was designed to end the practice of signing up foreign laborers to work in America for low wages. No immigrant could have a job or a promise of a job before landing.

Immigration Act of 1891: The job of processing immigrants was totally taken over by the federal government. All immigrants had to pass a medical exam and answer questions about their background and intentions in America. The law also barred persons suffering from "loathsome or dangerous diseases," those convicted of crimes involving "moral turpitude," polygamists, and those whose passage was paid for by others. Those rejected for immigration were deported at the expense of the shipping companies that had transported them.

Immigration Act of 1907: This law was passed during the peak year of U.S. immigration. It arranged for an agreement with Japan limiting the number of Japanese immigrant laborers. The law also barred those with physical and mental defects, those suffering from tuberculosis, children under 16 without parents, and women entering for "immoral purposes."

Temporary Quota Act of 1921: The number of immigrants from any country was limited to 3 percent of foreign-born persons of that nationality living in the United States in 1910. A total of 357,803 persons were allowed entry into the United States each year. The formula in this law provided for relatively large immigrant quotas for Northern European countries and small quotas from Southern and Eastern European countries.

Immigration Act of 1924: This law further discriminated against Southern and Eastern Europeans by limiting the number of immigrants from any country to 2 percent of foreign-born persons of that nationality living in the United States in 1890. Only 164,000 immigrants were to be admitted each year; this total was further reduced to 150,000 in 1929. In addition, it imposed new restrictions on Asian immigration.

Displaced Persons Act of 1948: Refugees from countries ravaged by World War II were allowed into the United States, but their entry was charged to the national quota limits established in 1924.

McCarren-Walter Act of 1952: This law maintained immigration at 150,000 persons a year. The first 50 percent of each country's quota was reserved for skilled and educated persons. The remaining 50 percent was for close relatives of U.S. citizens and others who qualified. In addition, refugees fleeing Communist countries were admitted under special authority of the U.S. Attorney General.

The Federal Insurance Contributions Act of 1954: This statute required employers to pay Social Security taxes for household workers earning more than $50 in a three-month period. In case of delinquency, employers were responsible for paying back taxes, plus interest, and were subject to fines.

Immigration Act of 1965: This law abolished the national origins quota system. It gave preference to skilled persons and immigrants who are closely related to American citizens. The law set a total immigration limit of 290,000 persons a year, which included a maximum of 20,000 individuals from any one country. After five years residency in the United States, immigrants may apply for naturalized citizenship.

Refugee Act of 1980: This law defined a "refugee" as any person leaving his or her own country because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular group, or political opinion." The law allowed for admission each year of 50,000 refugees.

Immigration Reform and Control Act of 1986: This act outlawed hiring illegal immigrants and required employers to verify their workers' citizenship status. It provided civil penalties of as much as $10,000 for each illegal immigrant hired. Repeat offenders face up to six months imprisonment. It also offered permanent resident status to illegal immigrants who can prove they have lived continuously in the United States since January 1982.

Immigration Act of 1990: This law increased the immigration limit to 700,000 persons per year for 1992, 1993, and 1994. After 1994, the limit will be 675,000 persons per year.

CIVIC OPTIONS ON PROPOSITION 187

PUBLIC POLICY CASE STUDY

The control of United States borders and the flow of people across them is the responsibility of the federal government. The U.S. Immigration and Naturalization Service (INS) administers the many federal laws that determine legal status in the United States. However, federal efforts have not been successful in controlling the number of illegal immigrants in California and in other areas including Texas, Arizona, south Florida, New York and Chicago. The INS estimated that California had roughly 1.6 million illegal immigrants in 1994.

The Proposition

Proposition 187 was the most controversial measure on the California State ballot in 1994. It serves as a focus of a larger debate about what should be done about illegal immigration. For a proposition to be placed on the ballot, its backers must qualify the measure. This means they must circulate petitions among registered voters. Backers must collect enough valid signatures to amount to 5 percent of the total number of voters who cast ballots in the last election for state governor. Proposition 187 qualified and was placed on the ballot.

The purpose of Proposition 187 was very clear. It was designed to discourage illegal immigration into California by denying education, health, and social services to people who do not have legal immigrant status. People without legal status could be barred from any non-emergency health service. To make this happen, the measure requires educational, public health, social service administrators, and law enforcement to check on the immigration or citizenship status of the people they serve. For example, school officials would have to check the status of all students. Social service workers would have to check the status of their clients. The names of all those suspected of illegal status would be sent to the federal immigration service and the California attorney general.

Supporters and Opponents

The supporters of Proposition 187 include former immigration service administrators Harold Ezell and Alan Nelson, Assemblyman Richard Mountjoy, Gov. Pete Wilson, the California Republican Party, U.S. Senate candidate Mike Huffington and the California Coalition for Immigration Reform.

Opponents of the Proposition 187 include the California Teachers Association, the California Labor Assn., The California Medical Assn., The State League of Women Voters, California State Employees Assn., Los Angeles City Council, President Bill Clinton, U.S. Sen. Dianne Feinstein, and candidate for governor, Kathleen Brown.

Arguments

Supporters of Proposition 187 believe that illegal immigration is a very serious problem, especially in California. They argue that the federal government has failed to deal with the problem. In general, they believe that illegal immigration is a drain on California taxpayers. They also believe that it is morally wrong and hurts the economy and the job market. They believe that the measure would force the federal government to better control the borders. The law, they argue, will discourage illegal immigration and reduce costs of public services by hundreds of millions of dollars. These savings, they argue, could be used to improve services to legal residents or to cut taxes.

Opponents of Proposition 187 may agree that illegal immigration is a serious problem, but they believe that the measure is unconstitutional and creates bad public policy. Because the proposition may violate federal law, they fear that it could put California's federal funding in jeopardy at a cost of billions of dollars.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590

They point to an existing U.S. Supreme Court decision, *Plyler v. Doe* (1982), which held that the children of illegal immigrants could not be denied access to public education. If the court follows this precedent, the law might never go into effect. Opponents also argue that Proposition 187 is bad public policy because it requires public service employees to enforce it, turning them into law enforcement officers. They worry that if illegal immigrants are denied health services, disease rates may increase. Or, if students are forced out of school and onto the streets with nothing to do, crime rates may increase. Finally, opponents argue that the measure could increase prejudice against brown-skinned residents whether they are citizens, legal residents, visitors or illegal immigrants.

Whether the new California law succeed or fails, it is already having a national effect.

The Future

In the November election, Proposition 187 passed by a nearly 3-2 margin, but the immediate effect of the new law is unknown. It is currently being challenged in court by numerous lawsuits, some filed by government entities and supported by public officials. This process could take a long time. If the Supreme Court rules that the law violates the Constitution, certain of its provisions may never go into effect. Even if it does, some doubt that it can be enforced.

The controversy over the new law continued after the election. Some Latino opponents of the new law urged a boycott of tourism to California; others urged a boycott of certain corporations which had made political contributions to the campaign of Governor Pete Wilson, a supporter of the measure. Some Latino groups opposed the boycotts, fearing it would increase unemployment in the state. From the other side of the issue, some supporters of the new law urged recall campaigns against public officials who joined in law suits to stop the law from going into effect.

The long-term effects of Proposition 187 are even more cloudy. Will it endanger federal funding to California? Will it save the state money? Will it increase prejudice and racial tensions? Will it discourage illegal immigration?

Whether the new California law succeeds or fails, it is already having a national effect. For example, one proposal by some house Republicans would deny welfare benefits to legal immigrants who are not citizens. However, a debate exists within the Republic Party. New house speaker Newt Gingrich has voiced his concerns about denying benefits to legal immigrants. He stated the belief that the efforts to eliminate non-funded federal mandates will eventually solve the problem of the burden on certain states to provide services for illegal immigrants. Under this policy, he argued, states will not be required to provide services unless the federal government is willing to pay for them. In spite of these developments, it is possible that other states with large illegal immigrant populations will consider adopting laws similar to Proposition 187.

For Discussion

1. How did Proposition 187 get on the ballot?
2. What is the purpose of the proposition? What is it supposed to accomplish?
3. What does the proposition require? How is it supposed to work?
4. What arguments do the supporters make? What arguments do opponents make?
5. What additional arguments might be made?

Activities

A. A Matter of Policy

Introduction: Proposition 187 is an example of a public policy. Public policy is a governmental law, rule or action on a particular issue. Because public policy can affect many lives and have widespread impact, there are often many opinions about what is good or bad policy. When thinking about public policy, it is important for everyone to ask some tough questions about it. This should happen

at every stage of policy making: when it is proposed, or adopted, or even after it goes into effect. Remember: laws and policies, even when enacted, can be changed or repealed.

All of us should be involved in policy making. We do this when we vote. We do this when we write to our elected officials or newspapers. We do this when we work on elections or join with others to speak our minds.

To be real players in helping shape public policy, we need to be informed about the issue. We need to think through issues and

To be real players in helping shape public policy, we need to be informed about the issue.

proposed policies. We need to be able to discuss and effectively state our views. This will help to persuade others.

Instructions: Based on what you have learned about Proposition 187, work in small groups to answer the following questions. Similar questions can be used when you are analyzing any policy. Make sure you think about and answer each question. Be prepared to share your answers with you classmates and friends.

1. What problem is Proposition 187 designed to address?
2. What are the causes of the problem? What effects does the problem have?
3. Does Proposition 187 address the causes of the problem? Does the proposition help lessen its negative effects?
4. Who supports Proposition 187? Who opposes it? Why?
5. What benefits will Proposition 187 have? What costs will it have?
6. How likely is it for Proposition 187 to go into effect? Will it work if it does?
7. What are some alternatives to Proposition 187?

B. Stating Your View

Once you have analyzed Proposition 187 or any other public policy proposal, create your own policy statement. Refer back to your answers to the policy questions. Make sure you address them in your statement. You can use your statement in a number of ways.

- *Write a letter: Include your policy statement in a letter and send it to a newspaper, radio or T.V. station, or to an elected official.*
- *Persuade others: Talk to friends, classmates or adults, especially voters, about your position. Find out what they think and try to discuss differences using facts and reasoned opinions. Try not to get angry if they don't agree. Sometimes just making people think about other views can help them change their minds.*
- *Hold a forum: Ask students or adults with a variety of points of view about Proposition 187 or other controversial policy to hold a forum on the issue. Ask all participants to state and give reasons for their positions. Discuss differences, answer questions, and try to persuade others in a calm and logical way.*

C. Civic Options

Each day, not just during elections, government makes public policy decisions. These decisions can affect your life and the life of your community. Yet, our society also offers people a variety of ways to influence public policy making. How many do you take advantage of? For each of the following options, answer these questions, and discuss your answers with your classmates and friends.

- Do you, or will you, take advantage of this civic option? Why or why not? Should you? Why or why not?
- Is this option important? Why or why not?

Option A—Staying Informed To know what government is doing, it is important to stay informed. Newspapers, magazines, television

and radio news programs, and books offer an enormous amount of information. Much of it is available at libraries, on databases, and at newsstands.

Option B—Voting Voting for candidates and on propositions is a direct way to influence public policy. Yet, very small percentages of those who can vote do vote, especially young people.

Option C—Civic Writing Writing to representatives, newspapers, and magazines gives everybody a right to express opinions on issues and help shape policy. Letter writing campaigns, especially to politicians, can be effective.

Option D—Election Participation At election time there are many ways to get involved. You can work for a candidate or a party, join a group supporting or opposing a proposition, urge voters to get out and vote, and canvass neighborhoods.

Option E—Attending Hearings Many governmental bodies—city councils, administrative agencies and commissions—hold public meetings and hearings. Often the public is invited to speak. Hearings provide a good opportunity to have your voice heard.

Option F—Joining Groups Many political and community groups have an interest in public policy that affects their interests. Examples include political parties, environmental groups, and neighborhood action committees. Some even have special programs for young people. Uniting with others can increase your power.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590

Education and the 14th Amendment

During the 1970s, large numbers of people entered the United States illegally. Many came from Mexico to work for low wages in border states like Texas. Attorney General William French Smith testified before Congress in 1981 that most of the three to six million illegal aliens were living more or less permanently in this country. This situation led to questions about the legal status and rights of these persons who are often referred to as "undocumented workers" or "illegal aliens," because they have not obtained papers necessary for being in the country.

The Fourteenth Amendment prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws." That equal protection clause clearly requires that all American citizens must be treated equally by the law. But does the equal protection clause also demand equal treatment for those who are not citizens or who have entered the United States illegally?

In 1982, the U.S. Supreme Court decided the case of a group of children of undocumented workers who had been denied free public schooling by the state of Texas. After reading the background and arguments of this case, your class will have the opportunity to role-play the Supreme Court hearing.

The Background of *Plyler v. Doe*

In May 1975, the Texas state legislature passed a law authorizing school districts to deny enrollment to children who had not been "legally admitted" into the United States. Under this law, Texas school districts could either entirely bar the children of persons who entered illegally from the schools or charge them tuition. The Tyler Independent School District in Smith County chose the second option.

Several federal court lawsuits were filed against the Texas law. The first was a class-action suit filed in 1977 by legal defense attorney on behalf of "certain school-age children of Mexican origins residing in Smith County, Texas, who could not established that they had been legally admitted into the United States." A federal district court ruled in 1977 and again in 1980 that the state law violated the equal protection clause of the Fourteenth Amendment. An injunction (court order) barred the state and the Tyler School Board from denying free public schooling to the undocumented immigrant children. A federal appeals court in 1981 agreed with the lower court ruling. At this point, the Tyler school board and school superintendent, James Plyler, appealed to the U.S. Supreme Court.

The Constitutional Question

In preparing their briefs for the Supreme Court hearings, the attorneys for the Tyler school district, as well as the attorneys for the undocumented immigrant children, had to address two basic constitutional questions:

- Does the Fourteenth Amendment's equal protection clause apply to school-age children who have not been "legally admitted" into the United States?
- Does the Fourteenth Amendment's equal protection clause require Texas and the Tyler Independent School District to provide a free public education to school-age children who have not been "legally admitted" into the United States on an equal basis with children who are legally residing in the state?

The Arguments of the Appellants

Attorneys representing the Tyler Independent School District, the appellants in this case, answered "no" to both of the constitutional questions. The support their position, the appellants offered the following arguments:

- The children in this case are not "persons" within the state's "jurisdiction." They are unlawfully living in the state and are subject to deportation.
- By denying free public schooling to children of undocumented immigrants, the Texas law serves a "substantial state interest" which justified an exception to the equal protection clause. The "substantial state interest" in this case is based on the following:

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590

a. It will case Texas over $62 million per year to educate the estimated 20,000 children of undocumented immigrants now living in the state. This money could better be spent on the children of legal residents.

b. A free public education for the children in this case will encourage the continued influx of undocumented immigrants into Texas.

c. The children of undocumented aliens place "special burdens" on the Texas education system such as the hiring of additional bilingual teachers.

A free public education for the children. . . will encourage the continued influx of undocumented immigrants. . .

- The U.S. Supreme court has earlier held that a free public education is not a "fundamental rights" under the Constitution.[*San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973)]
- Requiring free public schooling for these children will lead to other cases in which those who have entered the country illegally will demand equal access to such public benefits as food stamps, unemployment insurance, and a free college education.
- Congress and the federal government should be held responsible for the education of illegal immigrant children since this is a national, not a state problem.
- The Supreme Court has no constitutional authority to strike down state laws simply because they may be unwise.
- The Supreme Court has no constitutional authority to create rights when they do not exists in the Constitution.
- The Supreme Court should not attempt to solve social problems; this is the job of the Congress and the state legislatures.
- It is not fair for Texas taxpayers to be held responsible for educating the children of the world.

The Arguments of the Respondents

The attorneys representing the undocumented immigrant children, the respondents in this case, answered "yes" to both of the constitutional questions. To support their position, the respondents offered the following arguments:

The U.S. Supreme Court has previously ruled that the equal protection clause of the Fourteenth Amendment applies not only to citizens but to "any person" including aliens [*Yick Wo v. Hopkins* 118 U.S. 356 (1886)]. The children in this cast are "persons" living within the "jurisdiction" of the state since they reside in Texas and are subject to its laws.

- Discrimination against the school-age children in this case is not justified by any "substantial state interest":

  a. The children in this case represent only 1 percent of the school-age population in Texas. Spending some state funds by educating these children will not reduce the quality of schooling of the other children.

  b. These is little evidence that undocumented immigrants come to Texas seeking educational benefits for their children. Most come looking for jobs.

  c. Most of the state funds used for bilingual education and related special needs are spent on pupils who are legal residents.
- While education may not be a "fundamental right" under the Constitution, the equal protection clause of the Fourteenth Amendment requires that when a state establishes a public school system (as in Texas), no child living in that state may be denied equal access to schooling.
- Failure to educate these children will lead to higher future social costs related to unemployment, welfare, and crime.
- Children should not be penalized for the illegal acts of their parents.
- Undocumented immigrant children could later become legal residents or even citizens as a result of marriage or changes in the law.
- Denying a free public education to the children of undocumented immigrants now will

keep them forever in the lowest socio-economic class.

- Some children of undocumented immigrant parents were born in this country. These children are already full citizens of the United States and are entitled to an education. However, their brothers and sisters born in Mexico are still in the U.S. illegally. Is it fair for some children in a family to have access to public education while others are denied?
- The Texas law presents the danger of creating a permanent class of undocumented immigrants encouraged to stay as cheap labor but denied any benefits of society.
- Texas will be better off having these children in school rather than roaming the streets.

For Discussion and Writing

1. In your opinion, who does the equal protection clause of the Fourteenth Amendment protect?
2. Research the Immigration Reform and Control Act of 1986. Did this law seem to justify or not justify the idea of providing free public schooling to the children of undocumented immigrants?
3. Do you think any of the following public benefits should be available to undocumented immigrants and/or their children? Why? Public College Education—Public Housing—Food Stamps—Welfare—Public Schooling—Unemployment Benefits.

For Further Reading

Abraham, Henry J. *Freedom and the Court.* 5th ed. New York: Oxford University Press, 1988.

See *New York Times* articles on the Plyler v. Doe Supreme Court decision, June 16, 1982, pp. 1 + and D22.

Activity

1. Divide the class into three groups to take on the roles of attorneys for the appellants, attorneys for the respondents, and justices of the U.S. Supreme Court.
2. The attorney group should again read the constitutional questions in the case and the arguments for their side. Each attorney should be responsible for presenting to the Supreme Court at lease one of the ten arguments. Attorneys should be prepared to explain and answer questions on their arguments, not merely read them word-for-word from the article.
3. One of two attorneys from each side of the case should additionally prepare to make summary statements. These statements will come at the end of the Supreme Court hearing and should directly answer the two constitutional questions.
4. The students role-playing justices of the Supreme Court should again read the entire article. They should prepare questions to ask the attorneys about their arguments. The justices should also choose a "chief justice" who will preside at the hearing and recognize attorneys who wish to speak.

Failure to educate these children will lead to higher future social costs related to unemployment, welfare, and crime.

Rules of Procedure

These rules modify actual Supreme Court procedure for the purpose of conducting this class simulation:

a. The chief justice will read the name of the case and the constitutional question that both sides must address.

b. The chief justice will them ask the appellants to present their arguments. Each attorney for the appellants will have a turn to present his or her argument. The justices (but not the attorneys on the other side) may interrupt and ask questions at any time.

c. The chief justice will next recognize individual attorneys for the respondents who wish to make rebuttals or ask questions.

d. The attorneys for the respondent will them have their turn to present arguments. When they are finished, the attorneys for the appellants will have the opportunity to make rebuttals or ask questions.

e. At the end of the hearing, the chief justice will recognize attorneys for the purpose of

presenting summary statements. The attorney(s) for the respondents will go first.

f. When the hearing has been concluded, the Supreme Court justices will meet privately to discuss their answer to the two constitutional questions. A separate vote should be taken on each question with a simple majority deciding each issue.

g. Finally, the chief justice will announce the vote on the two constitutional questions and each justice will have reasons for his or her votes.

U.S. Supreme Court Decision in *Plyler v. Doe* 457 U.S. 202(1982)

By a 5 to 4 vote, the Supreme Court decided:

1. The equal protection clause of the Fourteenth Amendment applies "to anyone, citizens or stranger" residing within a state's boundaries. The children in this case were within the "jurisdiction" of the state and were thus protected by the Fourteenth Amendment.

2. The equal protection clause of the Fourteenth Amendment requires Texas and the Tyler Independent School District to provide free public schooling to the children of undocumented immigrants on an equal basis with the other children in the state and school district.

Writing for the majority, Justice William Brennan concluded: "We cannot ignore the significant social costs borne by the nation when select groups are denied the means to absorb the values and skills upon which our social order rests."

Writing for the four dissenters, Chief Justice Warren Burger states: "By definition, illegal aliens have no rights whatever to be here, and the state may reasonably and constitutionally, elect to provide them with government services at the expense of those who are lawfully in the state."

This artile was originally published in *Bill of Rights in Action*, Vol. 7. No. 4, 1991.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005, (213)487-5590